IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RICHARD BARCOMB, Plaintiff, v. GENERAL MOTORS LLC, Serve at: CSC of St. Louis County, Inc. 130 South Bemiston Avenue, Suite 700 Clayton, MO 63105 Defendant.	)	Case No. **JURY TRIAL REQUESTED**

COMPLAINT

COMES NOW Plaintiff Richard Barcomb ("Plaintiff" or "Barcomb"), by and through undersigned counsel, and for his Complaint against Defendant General Motors LLC ("Defendant" or "General Motors"), states as follows:

PRELIMINARY STATEMENT

1. The Moving Ahead for Progress in the 21st Century Act ("MAP-21") was signed into law on July 6, 2012 in part to fill an important hole left by the Consumer Product Safety Improvement Act of 2008, 15 U.S.C. § 2087, regarding protection of motor vehicle safety whistleblowers from retaliation and wrongful termination.

2. Through MAP-21, Congress sought to ensure whistleblower protections for employees in motor-vehicle-related industries. Section 30171 of MAP-21 broadly prohibits motor vehicle manufacturers, part suppliers, and dealerships from discriminating or retaliating against employees for engaging in certain protected activities. 49 U.S.C. § 30171.

3. These protected activities include, *inter alia*, providing information to employers relating to any motor vehicle defect, noncompliance with safety or reporting requirements, or other vehicle safety standards, laws or regulations (*e.g.*, 49 U.S.C. § 30101 *et seq.*). *See* 49 U.S.C. § 30171(a)(1)-(5).

JURISDICTION AND VENUE

4. MAP-21 authorizes private parties to file an original cause of action with a United States District Court based on whistleblower discrimination and/or retaliation if the Secretary of Labor has not issued a final decision within 210 days after the private party filed his or her complaint and if the delay is not due to the bad faith of the employee.

5. On April 15, 2016 and May 3, 2016, Plaintiff filed complaints[1] with the Occupational Safety & Health Administration ("OSHA"), an agency of the United States Department of Labor ("DOL"), regarding discrimination and/or retaliation by Defendant for Plaintiff's reporting of information regarding motor vehicle safety defects and alleged failures to report and address the same.

6. As of the date of filing, the Secretary of Labor has not issued a final decision. Any delay in issuing a final decision has not been, and is not, due to any bad faith of Plaintiff. Therefore, this Court has jurisdiction over the instant Complaint pursuant to 49 U.S.C. § 30171(b)(3)(E) and 29 C.F.R. § 1988.114.

7. Additionally, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 in that this matter involves an action arising under the laws of the United States, and pursuant to 28 U.S.C. § 1332 in that the parties hereto are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

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[1] Plaintiff filed complaints (Case No. 7-7080-16-083) within 180 days of the alleged retaliatory action, as required by 49 U.S.C. § 30171(b)(1).

8. This Court also has jurisdiction over Plaintiff's wrongful discharge claims under Missouri law pursuant to 28 U.S.C. § 1367(a) because are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution, in that the same conduct and events form the basis of Plaintiff's claims under both federal and state law.

9. This Court has personal jurisdiction over Defendant because Defendant has sufficient contacts and conduct substantial business in the State of Missouri, particularly at the Wentzville Assembly Center in Wentzville, Missouri where it employs approximately 4,600 employees.

10. This Court has personal jurisdiction over Plaintiff because Plaintiff resides in St. Charles, Missouri and worked at Defendant's Wentzville Assembly Center.

11. Venue in this District is proper under 28 U.S.C. § 1391(b) because Defendant conducts substantial business in this District, and a substantial part of the events or omissions giving rise to the claim occurred in this District in that Defendant hired, controlled, disciplined, compensated, and fired employees, including Plaintiff, in Wentzville, Missouri.

PARTIES

12. Barcomb is a citizen of the United States who resides in St. Charles, Missouri and had been employed by Defendant (and/or its affiliated entities) for almost seventeen (17) years. During the past two years, Barcomb has worked in final process repairs as a repairperson at Defendant's Wentzville Assembly Center.

13. Plaintiff is an employee within the meaning of 49 U.S.C. § 30171.

14. Defendant is a Delaware limited liability company headquartered in Detroit, Michigan and engaged in the manufacture and sale of motor vehicles, with approximately 350 facilities in 59 countries and 215,000 employees.

15. General Motors LLC conducts business in the State of Missouri and has around 4,600 employees at its Wentzville Assembly Center.

16. Defendant is a motor vehicle manufacturer within the meaning of 49 U.S.C. § 30171.

FACTUAL BACKGROUND

17. Barcomb is married and has two children.

18. Barcomb worked for Defendant (and/or entities affiliated, owned, or operated by Defendant) from September 20, 1999 to May 2, 2016 in motor-vehicle-assembly-related work.

19. During the last two years, Barcomb has worked for Defendant in final process repairs as a repairperson, which is typically a position only achieved by employees with higher seniority.

20. During Barcomb's tenure at General Motors, he was never formally disciplined until he began reporting defects and potential fraud related to the manufacture and/or assembly of motor vehicles at General Motors through various channels and to various persons.

21. In January 2015, Barcomb began speaking with Group Leader Hermann Edward Manuel ("Manuel")—a member of Defendant's management—about his concern that unfixed defects were being reported and confirmed as fixed in the Global Standard Inspection Process ("GSIP").

22. Barcomb had previously reported this type of problem to local plant management when he witnessed it, but felt it was necessary to report to management outside of the local facility.

23. On or around August 20, 2015, Barcomb first brought to the local plant management's attention a safety concern about the use of a bake oven to store motor vehicle parts (including obsolete motor vehicle parts). Barcomb spoke with Brian Sorensen about his concern and asked for the proper procedures to be followed, but his request was largely ignored and Defendant continued to improperly use this space to store motor vehicle parts.

24. During late August or early September 2015, Barcomb contacted "AwareLine"—a putative resource through which Defendant's employees could report illegal or unethical conduct—to express concern about the unauthorized and unsafe storage of motor vehicle parts in an unused bake oven at the Wentzville facility.

25. On or around September 1, 2015, Built In Quality ("BIQ") auditors came to the Wentzville facility to conduct an audit; however, Defendant hid the aforementioned unauthorized and unsafe storage of vehicle parts by closing the door to the oven in order to avoid documentation thereof in the audit.

26. Barcomb's work area at the Wentzville facility was soon thereafter vandalized because of the attention he brought to management about the improper and unsafe storage of parts in the unused bake oven.

27. Around this time, Defendant's management began moving around their employees' lockers and personal belongings in order to make room for parts to be moved out of the bake oven because they were ostensibly "shutting the tunnel down" (*i.e.*, the bake oven where Defendant had improperly and unsafely stored motor vehicle parts).

28. Defendant's management told Plaintiff and other workers they could and could not keep certain things because of the need to create space for all of the parts to be moved out of the

tunnel, but Defendant never actually moved all of the motor vehicle parts out of the tunnel until months later.

29. Defendant's management did not intend to actually make room to move parts at this time, but rather intended to frustrate other employees and create animosity toward Barcomb for reporting the storage safety issue.

30. On or around September 16, 2015, Area Manager Kim Schneider ("Schneider") finally contacted Barcomb regarding the concerns that he communicated through "Awareline" a few weeks previously. Barcomb informed her that Defendant continued to improperly use the bake oven space to store motor vehicle parts and that Defendant used obsolete parts from this space to repair new vehicles.

31. Schneider acknowledged the impropriety of storing parts in this space, and responded that she would gather a list of obsolete parts from this space and make sure they were reorganized or removed from the oven.

32. On or around September 17, 2015, Defendant failed its BIQ inspection at the Wentzville facility. In response, Defendant sent in a group of managers from another plant to prepare the Wentzville facility for another audit.

33. On or around September 18, 2015, Barcomb submitted a written complaint through "AwareLine" regarding the safety concerns he had expressed to various managers at Defendant's Wentzville facility, failures of management to address these concerns, the workplace harassment he experienced in response to him raising his concerns, and fears regarding his job and the safety of others.

34. On or around September 18, 2015, Barcomb spoke with Nicholas Gruber ("Gruber")—one of Defendant's corporate investigators—regarding his "AwareLine" written complaint.

35. Within a few days, vandalism of Barcomb's work area increased. "RAT" was written over Barcomb's toolbox and other work equipment. Barcomb reported the vandalism to Defendant's management.

36. The next day, Barcomb brought into work a rubber rat to put on his tool box as a message to others that he would not be intimidated by their harassment. Barcomb hoped this message would bring an end to the harassment.

37. On or around September 26, 2015, Barcomb discovered job #1GA2741806 which had been fraudulently reported as repaired and confirmed in GSIP. This job had a broken main power steering plug, which had been shoved together enough to pass electrical testing. Barcomb found the issue and fixed it. Had he not done so, the plug would likely have been shipped to a customer and have eventually failed, leaving a driver without power steering—a serious safety defect with the ability to cause death.

38. Barcomb kept the broken plug, showed it to Superintendent Ed McHone ("McHone") later that day, and expressed his frustration to McHone about the serious danger which could have resulted to a customer driving a vehicle with the broken plug. Barcomb told him he was going to be reporting this type of fraud to corporate via the "AwareLine."

39. On or around September 28, 2015, Barcomb called in his concern about the broken plug to "AwareLine" and provided information on it (including the job number), as well as other information regarding similar types of problems/fraud which he had previously witnessed in his work and reported to local plant managers.

40. On or around October 7, 2015, Gruber called Barcomb regarding his report to "AwareLine" regarding the broken plug. Gruber indicated he recognized Barcomb's name from his previous report regarding the unsafe storage space. Barcomb informed Gruber that he witnessed problems similar to the broken plug problem occur frequently (*i.e.*, unfixed parts being reported and confirmed as "fixed"), and that this concerned Barcomb because he was only one of eighteen repairpersons at the facility.

41. On or around November 11, 2015, Barcomb spoke to Gruber again, at which time Gruber inquired as to how he could check the GSIP system to find specific jobs. Barcomb explained the process of how defective parts can be identified in the system as "confirmed not repaired." Gruber verified this process information while still on the phone with Barcomb. Gruber thereafter asked Barcomb to keep track of anything being done "out of process" and report back to him.

42. On or around March 2, 2016, Barcomb helped put out a fire on a unit which had caught on fire. After containing the fire, Barcomb asked a member of management—Group Leader, Bobby Morrison ("Morrison")—to place a safety call. A safety representative from the United Automobile Workers ("UAW")—Steve Workman ("Workman")—answered the call. Barcomb showed Workman the bake oven space in which lights had been unsafely strung. Workman told Morrison he would return to take pictures of the tunnel. Before leaving for work that day, Barcomb was told by co-workers that other repairpersons were angry with him for pointing out safety hazards with the bake oven.

43. On or around March 3, 2016, Barcomb came to work and found his rubber rat hanging from a noose in his work area. Barcomb began experiencing severe anxiety and immediately informed the day shift supervisor about the death threat. Plant safety and security,

along with labor relations representative George Herina ("Herina"), reported, took statements, and photographed the event. Due to his severe anxiety, Barcomb had to receive medical treatment on-site before being referred to an Employee Assistance Program and being sent home for the day.

44. On or around March 4, 2016, Barcomb reported the events leading up to the death threat to the "AwareLine."

45. On or around March 10, 2016, Gruber contacted Barcomb about the death threat. Gruber acknowledged he was familiar with Barcomb from his previous reports, which in his words were "really just connected to" what they had discussed previously. Gruber informed Barcomb that he had been at the plant conducting an investigation in February 2016. Gruber again asked about the process for identifying defects, and Barcomb explained specifically how this process was being circumvented.

46. On or around March 11, 2016, Barcomb identified a job that had a broken ground wire for a Sensing Diagnostic Module ("SDM") for an airbag. The job was reported as repaired and confirmed in GSIP, but the wire was never repaired. Barcomb complained to Morrison, who saw the wire was indeed still broken despite being reported as repaired. Morrison looked into the system to identify who repaired and confirmed the job. Morrison confirmed McHone had both notated the repair and confirmation of the repair. Barcomb printed the record and informed Morrison he would be passing the information along to a corporate investigator. Barcomb later that day discussed this incident with Superintendent Chad Williams ("C. Williams").

47. On or around March 17, 2016, Barcomb e-mailed Gruber regarding a non-exhaustive host of issues (including issues specific to job numbers) which he had witnessed and documented. Barcomb noted, among other things, he had reported and discussed examples of GSIP fraud to C. Williams, with whom Barcomb had also previously discussed the death threat.

48. On or around March 29, 2016, Barcomb was placed on disciplinary notice, but was not told the basis or reason therefor at that time.

49. On or around March 31, 2016, Barcomb e-mailed Gruber regarding updates around the plant, including the appointment of a new plant manager, the ongoing and unjustified criticism and scrutiny he faced at work, and the existence of other employees documenting fraudulent GSIP entries of unfixed parts being fixed. Gruber responded by asking for the other employee's list of fraudulent GSIP entries.

50. Later on March 31, 2016, Morrison and Jeremy Stritzel ("Stritzel")—Defendant's Labor Relations Representative—conducted a disciplinary interview of Barcomb. Barcomb was suspended for three days without pay for allegedly being out of his work area without permission. Barcomb not only had permission to be out of his work area, but also was required to be in order to perform his regular job duties in going on a parts run.

51. While exiting the Labor Relations office after this interview, Barcomb held up the disciplinary paperwork and stated, "this was a mistake." Barcomb returned to his work area to put away his tools. Stritzel thereafter showed up to Barcomb's work area with plant security and told Barcomb he was on further disciplinary notice for "creating a hostile work environment for him," but did not indicate what such discipline would be.

52. On April 1, 2016, Barcomb communicated with Gruber both by phone and e-mail regarding the retaliatory discipline imposed on him. Gruber indicated he opened a case on the matter.

53. On April 4, 2016, Barcomb visited his doctor due to symptoms of severe anxiety and distress in connection with the occurrences at work. Barcomb went out on sick leave for three

weeks. Barcomb experienced, among other things, migraine headaches, gastrointestinal distress, insomnia, and diarrhea during his sick leave.

54. On April 7, 2016, Barcomb updated Gruber with information about another report of McHone fraudulently confirming an unrepaired job as repaired in the GSIP system. The job number was #1GA286645 and involved the incorrect installation of a U-Bolt on a van. McHone "bought" (*i.e.*, confirmed as repaired) the job number out of the GSIP system before being repaired. Justin Tyler Smith ("Smith")—a Team Leader at the Wentzville plant—reported the information.

55. On April 15, 2016, Barcomb e-mailed Gruber regarding word he received from co-workers that Morrison had told them Barcomb would be terminated upon his return from sick leave. Barcomb further informed Gruber he had contacted OSHA pursuant to MAP-21 to report the retaliation and discrimination.

56. On or around April 25, 2016, Barcomb attempted to return to work from sick leave, but was told by the nurse that he would have to be evaluated by the company physician before his return, and his appointment could not be set up until May 2, 2016.

57. On May 1, 2016, Barcomb e-mailed Gruber regarding his attempt to return to work on April 25 and other information he had received regarding fraud in the GSIP system. Another repairperson—Dave Woods ("Woods")—provided Barcomb job numbers regarding defects confirmed as repaired but not repaired (*i.e.*, job #1GA2864892, job #1GA2868855, job #1GA2881839). Woods provided this information to Barcomb, but, out of fear of retaliation at work, asked Barcomb to not disclose it until after Woods' last day of work before retirement—April 30, 2016.

58. On May 2, 2016, Barcomb returned to work for a medical evaluation by the company physician. Millie Donnelly ("Donnelly")—an Employee Assistance Program

Representative—was present during this evaluation and took notes. Barcomb explained the cause of his anxiety and stress at work and the physician praised Barcomb as "the kind of worker GM needs." Barcomb was cleared to return to work.

59. On May 2, 2016, Barcomb attempted to begin work after returning to his work area and getting his tools out. However, Morrison soon thereafter brought Barcomb to Labor Relations and Defendant discharged him for allegedly "creating a hostile work environment on the shift of 3.31.2016."

60. On May 3, 2016, Barcomb e-mailed Defendant's physician—Don A. Jones, M.D. ("Dr. Jones")—because Dr. Jones had invited him to do so if he continued to experience anxiety and related symptoms. Dr. Jones briefly confirmed Barcomb could reach out to a physician until the end of the month, but provided no other assurance regarding whether Barcomb could visit him or other doctors who had previously seen Barcomb to treat his anxiety and related symptoms.

61. On May 3, 2016, Barcomb contacted OSHA again regarding the discrimination and retaliation he suffered at work and filed a complaint.

62. On May 4, 2016, Barcomb e-mailed Dr. Jones about continuing symptoms caused by Defendant's actions and his attempts to address the same by joining a group therapy program.

63. On May 6, 2016, Barcomb e-mailed Gruber for updates on the case opened up by Gruber on April 1, 2016.

COUNT I

DISCRIMINATION AND RETALIATORY DISCHARGE IN VIOLATION OF 49 U.S.C. § 30171

64. Barcomb incorporates by reference all preceding paragraphs, as if fully stated herein.

65. MAP-21 prohibits motor vehicle manufacturers from discharging or otherwise

discriminating against any employees with respect to compensation, terms, conditions or privileges of employment because, *inter alia*, the employee (or any person acting pursuant to a request of the employee):

a. provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of Chapter 301;

b. has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of Chapter 301;

c. testified or is about to testify in such a proceeding;

d. assisted or participated or is about to assist or participate in such a proceeding; or

e. objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of Chapter 301 or any order, rule, regulation, standard, or ban under such provision.

49 U.S.C. § 30171(a)(1)-(5).

66. Barcomb engaged in protected activity by:

a. Telling several members of Defendant's management and other co-workers and agents about motor vehicle defects falsely reported and/or confirmed as repaired;

b. Submitting reports and informing Defendant's corporate investigators about motor vehicle defects falsely reported and/or confirmed as repaired;

c. Reporting the unsafe and unauthorized storage, maintenance, and/or use of motor vehicle parts to members of Defendant's management and co-workers;

d. Protesting and objecting to unlawful adverse actions and pre-textual discipline imposed against him based on his reporting of unsafe motor vehicle parts; and

e. Filing a complaint pursuant to MAP-21.

67. Defendant had knowledge or suspected Barcomb had engaged in protected activity when they took unlawful adverse actions against him, retaliated against him, and imposed pre-textual discipline against him and terminated him.

68. Defendant took adverse actions against Barcomb when it:

a. Subjected him to unwarranted scrutiny and criticism;

b. Suspended him without pay;

c. Increased the severity of discipline when Barcomb objected to the pre-textual discipline against him; and

d. Discharged him.

69. Barcomb's protected activity was a contributing factor in Defendant's decision to take adverse actions against him.

70. Defendant would not have taken the same actions absent Barcomb's protected activity.

71. As a direct and proximate result of Defendant's actions and decisions, Barcomb has suffered lost wages, benefits of employment, and emotional distress, and continues to suffer such injuries now and in the future.

72. Defendant's actions were intentional, willful, knowing, wanton, malicious, and in reckless disregard of the safety of the public and Barcomb's legal rights.

WHEREFORE Plaintiff Richard Barcomb respectfully seeks relief and judgment against Defendant as follows: (1) enter judgment against Defendant for violation of the protections afforded by 49 U.S.C. § 30171(a)(1)-(5) and other provisions under Chapter 301; (2) pay to Barcomb an award for compensatory damages resulting from loss of wages, income and benefits in an amount to be determined by the trier of fact; (3) take affirmative action to abate Defendant's violation(s); (4) reinstate Barcomb to his position as a repairperson in final process repairs and restore the terms, conditions, and privileges associated with his employment; (5) pay to Barcomb an award for emotional distress; (6) pre-judgment and post-judgment interest, and other penalties, as may be provided by law; (7) pay to him an award for costs (including litigation and expert costs), disbursements, and attorneys' fees; and such other and further relief as the Court deems fair and equitable under the circumstances.

COUNT II

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY UNDER MISSOURI LAW

73. Barcomb incorporates by reference all preceding paragraphs, as if fully stated herein.

74. Barcomb was discharged for reporting serious violations and/or alleged violations of federal law regarding motor vehicle defects and safety. *See* 49 U.S.C. § 30171(a)(1)-(5).

75. Defendant's adverse actions, decisions, and conduct described in this Petition constitute multiple violations of federal law and clearly mandated public policy on reporting and safety compliance requirements regarding the manufacture and/or assembly of motor vehicles. *See* 49 U.S.C. § 30171(a)(1)-(5); *see also* 49 U.S.C. § 30101 *et seq.*

76. Barcomb's termination was in violation of Missouri public policy in that Missouri law prohibits at-will employees from being terminated for reporting wrongdoing or violations of law to superiors, or for refusing to violate the law or any well-established and clear mandate of public policy as expressed in statutes and regulations created by a governmental body.

77. As an employee of a motor vehicle manufacturer who repeatedly reported to his employer information regarding, *inter alia*, motor vehicle defects and potential fraud related thereto, Barcomb reported wrongdoing and/or violations of law to his superiors, and/or refused to violate clearly mandated public policy set forth by the federal government in Chapter 301 and MAP-21. 49 U.S.C. § 30101 *et seq.*

78. The violations reported by Barcomb—namely, that members of Defendant's management were falsely reporting motor vehicle parts as repaired and were unsafely storing and using obsolete motor vehicle parts in the manufacturing process—are sufficiently serious wrongs to invoke the public policy exception to employment-at-will under Missouri law.

79. Barcomb's reporting of wrongdoing and/or violations of law was a contributing factor in Defendant's decisions to take the adverse actions described herein against him.

80. Barcomb was wrongfully discharged from his employment in violation of public policy, as defined under Missouri law.

81. As a direct and proximate result of Defendant's unlawful termination in violation of public policy under Missouri law, Barcomb has suffered lost wages, benefits of employment, and emotional distress, and continues to suffer such injuries now and in the future.

82. Defendant's actions were intentional, willful, knowing, wanton, malicious, and in reckless disregard of the safety of the public and Barcomb's legal rights, subjecting Defendant to the imposition of punitive damages.

WHEREFORE Plaintiff Richard Barcomb respectfully seeks relief and judgment against Defendant as follows: (1) enter judgment against Defendant for wrongful termination in violation of public policy, as defined by Missouri law; (2) pay to Barcomb an award for compensatory damages resulting from loss of wages, income and benefits in an amount to be determined by the trier of fact; (3) pay to Barcomb an award for emotional distress; (4) pay to Barcomb an award of punitive damages; (5) pre-judgment and post-judgment interest as may be provided by law; (6) pay to him an award for costs (including litigation and expert costs); and such other and further relief as the Court deems fair and equitable under the circumstances.

REQUEST FOR JURY TRIAL

Plaintiff Richard Barcomb respectfully requests a trial by jury on all issues in this case which are so triable.

Respectfully submitted,

By: *________/s/ Kevin J. Dolley________________*

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